

REMARKS

Consideration of the above-identified application respectfully requested.

The amendments to the specification are for the correction of typographical and grammatical errors. In part, the words "tether" and "diminution" were misspelled, and other errors that are obvious from their context.

A substitute declaration is enclosed to properly claim priority to a co-pending patent application that was previously misidentified due to a typographical error. The specification and the declaration have been amended to correct this typographical error.

The attached substitute drawing sheets are for the correction of typographical errors in the figure legends. Consequently no new matter is introduced by any of these amendments to the specification.

Certain of the existing claims have been amended for the correction of typographical errors. In part, the words "tether" and "diminution" were misspelled, along with other errors that are obvious from their context. Claim 102 has been amended to properly identify its dependency.

New claims 139 – 218 have been added to claim matter disclosed but not claimed in the specification as filed. New claims 139, 153, 160, 171, 185, 196, 206, and 207 claim induction of apoptosis. The induction of apoptosis is discussed in the application at p.21, ll. 1-28. Specifically the induction of apoptosis by the application of heat is disclosed at p. 14, ll. 22-28 and p. 22, ll. 15-27.

New claims 140, 152, 161, 172, 186, 197, and 208 claim the induction of necrosis. The induction of apoptosis is discussed in the application at p. 14, ll. 22-28. Specifically the induction of apoptosis by the application of heat is disclosed at p. 22, ll. 15-27 and p. 54, ll. 24-30.

A number of new claims are drawn to specific temperatures ranges. A temperature range of 39° to 70°C is disclosed in the specification at p. 81, l. 5. Claims 141, 147, 153, 165, 173, 180, 190, 198, and 212 are drawn to a temperature range of 39° to 70°C. A temperature range of about 41° to 50°C is disclosed in the specification at p. 28, l. 26, and p. 81, l. 6. Claims 142, 148, 154, 166, 174, 181, 191, 199, and 213 are drawn to a temperature range of 41° to 50°C. A temperature range of about 42° to 45°C is disclosed in the specification at p. 2, l. 18. Claims 143, 149,

155, 167, 175, 182, 192, 200, and 214 are drawn to a temperature range of 42° to 45°C.

The specification makes apparent that the invention can be used to elevate the body temperature of a patient, or to evaluate the temperature of a target tissue or region. As is known in the art, and disclosed in the specification at p. 2, ll. 5-20, the body temperature of many patients is considered to be 37°C, although the mean body temperature of individuals and populations may vary. Thus the specification discloses support for operation of the invention in the temperature range of body temperature and above. Specifically, the specification discloses devices that evaluate temperature from body temperature (37° for one major human population) to 41°C at p. 35, ll.12-13. Claims 144, 150, 168, 193, 201, and 215 are drawn to a temperature range of 37° to 41°C. Applicants have also added new claims that recite an elevation of temperature equivalent to the elevation of temperature from 37° to the range of 39° to 70°C and from 37° to the range of 41° to 50°C. There is support in the application throughout, and as recited above for the elevation of temperature within a given range above body temperature. Claims 145, 146, 156, 157, 169, 170, 176, 177, 183, 184, 194, 195, 202, 203, 213, 214, 216, and 217 are drawn to the elevation of temperature within a given range above body temperature whether human or animal.

New claims 158, 163, 178, 188, 204, and 210 claim variations of the invention when used to target a neoplasm. Targeting neoplasms is discussed in the application at p. 2, ll. 24-27. Specific targeting of neoplastic tissue by the application of heat is disclosed at p. 18, ll. 28-31 and Figure 1. New claims 159, 164, 179, 189, 205, and 211 claim variations of the invention when used to target a tumor. Targeting tumors is discussed throughout the application and at p. 2, ll. 5-14. Specific targeting of tumor tissue by the application of heat is disclosed at p. 49, l. 31 to p. 50, l.6. New claims 162, 187, and 209 are drawn to hyperthermia therapy for the treatment of neoplasia. There is support in the specification for hyperthermia therapy for the treatment of neoplasia at p.2 ll.15-24. Neoplasia is widely known to those skilled in the art as neoplastic development or the growth of neoplastic tissue.

All claims are fully supported in the specification. Moreover, such claim amendments to existing claims are for clarification purposes only. Importantly, Applicants assert that no claims have been narrowed with the meaning of *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 US 722, 112 S.Ct. 1831, 152 L.Ed.2d 944, 62 USPQ2d 1705 (2002)). See also *Interactive Pictures Corp. v. Infinite Pictures Inc.*, Fed Cir., No. 01-1029, December 20, 2001 (addition of

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the words "transform calculation" was not a narrowing amendment because that addition did nothing more than make express what had been implicit in the claim as originally worded).

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited on October 28, 2004 with the United States Postal Service as first class mail in an envelope addressed to:

Mail Stop Amendment
Commissioner for Patents
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Amendments to the Drawings

The three attached drawing sheets includes changes to Figure 3, Figure 39B and Figure 39C. Please replace the following original drawing sheets with the attached substitute sheets:

- the drawing sheet carrying Figure 3 and 4;
- the drawing sheet carrying Figure 39B; and
- the drawing sheet carrying Figure 39C.